



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The California Constitutional Convention of 1878-1879

(CONCLUDED FROM NOVEMBER ISSUE)

VIII.

LET us now consider the attitude taken toward education. Section 6 of Article IX provided that the entire revenue "derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools." This was intended to place the school money where it would most benefit the working classes. Other schools could be provided for by the legislature or sub-divisions of the State, provided that no money should be appropriated for private or sectarian schools. Many statements were made in the Convention as to the benefits of public education. An amendment forbidding the teaching of other languages than English was defeated after a warm debate.⁸⁸ There was some sentiment for prohibiting appropriations for higher schools, on the ground that it was a useless expense.⁸⁹ The teaching of sectarian doctrines was prohibited.⁹⁰ Mr. Johnson argue for vocational schools,⁹¹ and Mr. Overton argued thus against free text books:⁹²

"They propose that this State shall go to work and print free text-books. Why don't they ask the rest, and require the taxpayers to clothe the children, and furnish them with shoes as well as books? I think the cases are parallel. . . . I believe the children should buy their own books; then the parents will take some interest in the way the children take care of them."

The provision for free text books was defeated and it was

⁸⁸ Debates and Proceedings, pp. 1101, 1102, 1103, 1410.

⁸⁹ Id. p. 1102 (Howard).

⁹⁰ Bancroft (Vol. 24, p. 392, note) says this was due to Catholic opposition to Bible-reading; the debates do not disclose this. For opinions on sectarian schools see Debates and Proceedings, pp. 1103-1109. Subsequent references to Bancroft will refer to volume twenty-four.

⁹¹ Debates, p. 1104.

⁹² Id. p. 1109.

provided that text-books should be used for the period of four years after their adoption.

Section 9 provided for the establishment of University of California. Clause 1 provided that the school should be independent of all political and sectarian influences; Clause 2 provided for co-education. The only alumnus in the Convention, Mr. Freud, in an excellent speech, praised the faculty of the University.⁹³ Co-education was provided for by a vote of one hundred and three to twenty.⁹⁴ Both sexes had been taught before, but Mr. Ayers (the author of the amendment) said the provision was necessary. But an amendment to allow women on the Board of Regents was lost.⁹⁵ Mr. Caples, who seems to have been the arch conservative of the Convention, declared that it was not the duty of the state to provide professional education.⁹⁶ Opposing normal schools he said:

"What logic, what justice, what propriety; what common sense is there in educating school teachers? School teachers are well remunerated for their services. . . . Why not permit them to educate themselves? Why educate them at the expense of the taxpayers?"

IX.

Our ideas of the political theories and beliefs of the members of the Convention must largely be found in the debates, in the Address to the State, and in the Constitution itself. There were few definite declarations or formulations of theory; we would not expect them in such a body. A few brief remarks in the debates on the Bill of Rights are the nearest approach to a statement of political theory. The chief matter of discussion was the nature of the union; whether or not the Federal Constitution was supreme; and the right of secession.⁹⁷

Thus, Mr. Rolfe declared: "I do not recognize the Constitution of the United States as the great charter of our liberties. We had State charters before there was any Constitution of the United States." He proceeded to discuss the original nature of our central government. Mr. Brown said that care must be

⁹³ Id. p. 1110.

⁹⁴ Id. p. 1476.

⁹⁵ Id. p. 1123.

⁹⁶ Id. p. 1409.

⁹⁷ Id. pp. 238, 239, 1182, 1183.

taken, not to recognize the United States constitution as paramount, but to reserve the rights of the States. Mr. Wyatt maintained that the States were the real sources of government in the United States. Mr. Howard said: "I am rather inclined to agree with the gentleman from Alameda, that the State Constitution is as much or more the charter of our liberties than the Constitution of the United States." And Mr. Filcher declared: "It is bad policy to insert in this Constitution that the American government is a nation. . . . Is it policy to assert what a large portion of the people are yet disputing about?" This was the old controversy of whether we are a "nation" or a "people". Mr. Barbour said: "I believe the principles and doctrines that were asserted by Calhoun were correct, and would have been maintained by the people of the United States if the element of slavery had been out of the question." Mr. Smith said that in California its own law was supreme.

Other speakers were even more outspoken in their beliefs. Thus Mr. Cross said: "The general government has no right to interfere with our police regulation, and I think we have a right to protect ourselves." Mr. Ringgold declared: "The doctrine of State sovereignty might as well be announced here as anywhere else. . . . The Constitution of the United States is a political abortion. . . . The Constitution of the United States has been violated in the interest of capital in every section and article. It has outlived its usefulness. . . . When the Constitution was swept aside, there were four million souls set free. If to preserve the Constitution, liberty must be suppressed, then abolish the Constitution. . . . I believe in State sovereignty, and shall ever stand by it as long as I live." And Mr. Kleine asserted: "I am willing to respect the United States government as long as the government protects me; but, gentlemen, as long as the government of the United States won't protect its own citizens, I do not see any reason why we should respect the government. . . . Fifty, sixty, or seventy years ago our government was in favor of the poor; it protected the poor man, but now it has become an aristocracy. . . . If our government don't protect us, and if our government is to make this State a China Empire, I say we have a right to secede, and we have a right to protect ourselves."

Commenting on such speeches as are quoted from above, Mr. McFarland said:⁹⁸

"Today, in this State of California, at this hour, we find gentlemen nervous about recognizing the Constitution of the United States. . . . It is a mistake to say that the people in California are loyal. No such thing. . . . Perhaps a majority of this Convention are in favor of secession. . . . Although that doctrine of secession was put down by force of arms, it is still alive, and has its advocates in California and in this Convention. . . . If General Sumner had not come to this State just as he did, this State would have gone to the Southern Confederacy . . . and everybody knows it. . . . I know that a majority of the people of the State of California are loyal, but I know that there is a large element here that is disloyal, and that if they had the power they would have taken this State out of the Union. I know that there are able men in the State of California who have never given up the doctrine of secession, and who stand for it to-day."

A great many speakers charged that the debate was the occasion of overmuch "waving of the bloody-shirt" and "political claptrap." Defending the people of California against the charges of Mr. McFarland, Mr. O'Sullivan said:⁹⁹ "California never wanted to go out of the Union. There never was any attempt made to take her out of the Union. Secession was not entertained by one man out of a hundred here during the civil war."

Some of the members of the Workingmen's party seem to have been prejudiced against the national government because of its neglect in the Chinese matter. But the great majority of the members of the Workingmen's party, particularly the Irish members, were intensely loyal to the United States government and constitution. We should note here that thirty-five members of the Convention were foreign-born, almost half of San Francisco's delegation. The Irish were predominant, but there were some Germans.

Section 3 of Article I as first proposed and amended read: "We recognize the Constitution of the United States of America as the great charter of our liberties, and the supreme law of the land." This was struck out¹⁰⁰ by a vote of seventy-three

⁹⁸ *Id.* pp. 241, 1181.

⁹⁹ *Id.* p. 1187.

¹⁰⁰ *Id.* p. 243.

to sixty-four. Then an amendment was adopted declaring that there was no right to secede. This was in the committee of the whole; the vote was seventy-six to fifty-eight.¹ In the Convention this was rejected by a vote of fifty-five to thirty-eight.² It must be stated, however, that some of the opponents urged that to put such a statement in the Constitution would be to tacitly admit that California had been a disaffected state. Section 3 as finally adopted read: "The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land." The second clause was adopted one hundred and one to seventeen.³ It seems, nevertheless, that many of the members voting for it did not believe it to be the "supreme law of California", distinguishing carefully between the "land"—that is the nation as a whole—and the separate States. That is, as regarded the States in their relation to one another or to foreign nations, the United States Constitution was supreme; as for California, the State constitution was the "supreme law". Such was the view taken by many members. Some of the legal arguments in support of this position are extremely clever and ingenious. The extent of the opposition to the federal government and of the belief in the right of secession was surprising in this section of our country, nearly fifteen years after the close of the Civil War.

X.

But the political changes and doctrines in the new Constitution were only a means to an end—the securing of certain economic changes, many of them expressed directly in the Constitution and in the debates in the Convention. One author declares, and with some justification it must be admitted, that "The main underlying spirit of the new instrument was an attack upon capital under the specious name of opposition to monopolies."⁴ Mr. Bancroft declares:⁵ "The new constitution was framed to make the rich pay their share of taxation, to control corporations, to correct the revenue system, and to equalize the rights of

¹ Id. p. 243.

² Id. p. 1169.

³ Id. pp. 1187, 1188.

⁴ Mr. Hittell in *Berkeley Quarterly*, July, 1880, p. 234.

⁵ Bancroft, p. 406.

the people altogether." It was, he tells us again,⁶ "formed to secure labor against the tyranny of capital."

Especially among the Workingmen's party there was an underlying sentiment of hostility to corporations, a sentiment justified in some measure in the state of California at that time, which at times crops out in the speeches of members. Mr. Hale complained in the Convention that attempts at legislative control of corporations had proved abortive for fifteen years.⁷ Mr. O'Donnell said:⁸ "Shall the people control the corporations, or shall the corporations control the people? . . . It seems pretty near time that the people were controlling these (railroad) corporations." Mr. Dowling speaks of corporations as "monstrous monopolies"⁹ which in the public interest must be controlled and refers to the "thieving corporations" in San Francisco. "We want to attack these corporations, and these monster monopolies, that are to-day the great burden of the people," and "help to rid the State of these monopolies that are like barnacles clinging to the body of the people. These men never work for a living, and never will work. They are as big a nuisance as Chinatown, and render the poor man a slave." Mr. Hager declared:¹⁰ "I know there is a prevailing prejudice against capital and capitalists, and to some extent it has manifested itself in this Convention." Mr. Estee refers¹¹ to "the corrupting influence of corporate power" and Mr. O'Donnell asserted¹² that "corporations have committed with impunity crimes for which an individual would be sent to the state prison for life. You all know that." (Applause). And Mr. Howard, in many ways one of the ablest men in the Convention, said: "I disagree with the proposition that corporations are necessary. I hold, on the contrary, that limited partnerships are altogether sufficient." He referred to "irresponsible" and "godless" corporations.

The corporation which bore the brunt of this attack was the Central Pacific Railroad. Governor Stanford was denounced many times in the convention. Mr. Wickes said:¹³ "A wave

⁶ Id. p. 375.

⁷ Debates and Proceedings, p. 453.

⁸ Id. p. 453.

⁹ Id. p. 402.

¹⁰ Id. p. 385.

¹¹ Id. p. 377.

¹² Id. p. 388.

¹³ Id. p. 530.

of popular indignation against corporations, and against the Central Pacific Railroad in particular, bore many of us hither." He charged the Central Pacific with having bought legislators. Mr. Barbour openly charged the railroad with being in politics.¹⁴ "Don't they hold the sovereignty of the State already? Don't they make governors, senators, judges, and everything for you? . . . It bullies the people all over the state." He declared the press of the State was under the control of the Central Pacific. Stanford he compared to Tweed. And Mr. McCallum declared:¹⁵ "If there is any great power in the State over all other powers, political or otherwise, it is that great corporation called the Central Pacific Railroad Company. It has controlled absolutely the politics of this State for fifteen years." Such statements are typical of those made by a large number of the delegates.

This opposition to railroad control of politics did not succeed, however, in abolishing the great power of the companies; not until very recent years has the railroad domination in California been completely broken up. The fact, however, that even at this early date there was a deep feeling against the railroads is significant.

To a lesser extent this opposition extended to other corporations, and laws designed to regulate strictly were passed. Mr. Webster proposed what was practically double liability on all stockholders. He argued that this would protect the creditors in case some of the stockholders were insolvent.¹⁶ This was defeated by a vote of forty-four to seventy-seven, but the provision for single liability in proportion to the total liabilities of the corporation was adopted by eighty-one to forty.¹⁷ Individual liability was opposed by Mr. Wilson¹⁸ as being a discrimination against domestic corporations. His argument was that the creditors should assume the risk that the funds and assets of corporations would be sufficient to meet their liabilities. His argument as to discrimination was answered in a fairly satisfactory way by Mr. Herrington.¹⁹ The latter declared also: "This

¹⁴ *Id.* p. 533.

¹⁵ *Id.* p. 537.

¹⁶ *Id.* p. 382.

¹⁷ *Id.* p. 388.

¹⁸ *Id.* p. 384.

¹⁹ *Id.* p. 386.

legislation is rather in favor of the people than of the corporations." Mr. Hager²⁰ argued that it would drive capital from the state. Mr. Shafter said that as much stock ownership was concealed the plan would not work. But his real opposition was expressed as follows: "I do not see why the State should constitute herself the dry nurse of every individual citizen in the country, and say to them, 'You live under a paternal government that will take care of you, and see that you do not make any improper agreement'." Mr. Howard's reason for opposition was previously quoted; he opposed all corporations, and favored limited partnerships. In support of the plan it was argued by Mr. Cross²¹ that if stockholders were made liable they would increase their interest in the affairs of the corporations, to the benefit of themselves, the corporations, and the public. Mr. O'Donnell favored the plan as it "makes corporations strong",²² and encouraged investment, as well as protecting the public.

Even more important was the provision making directors and trustees jointly and severally liable to the creditors and stockholders for all money embezzled or misappropriated during their term of office. This was adopted²³ with ninety-five ayes—the noes were not counted. Mr. Hershell said: "This is the first victory for the people that has occurred in four years." The directors were held to be in a position holding "trusts of a public nature."²⁴ The only logical argument advanced in opposition was Mr. Shafter's statement²⁵ that innocent directors would be made liable for the acts of the guilty.

Corporations were given the right to sue and be sued as natural persons. Fictitious increase of stock or indebtedness was to be void. Sales on margin or for future delivery were not to be permitted. Opposition to Boards of Trade was manifested throughout the debate on this section.²⁶ It was claimed that the provisions proposed would drive capital from the state. Mr. Cross declared:²⁷ "So far from the transactions of the stock

²⁰ Id. p. 385.

²¹ Id. p. 387.

²² Id. p. 388.

²³ Id. p. 418.

²⁴ Id. p. 397.

²⁵ Id. p. 402.

²⁶ Id. pp. 805-810.

²⁷ Id. p. 809.

boards being in any way an aid to the mining interests of California, they are the means of diverting from the legitimate business of mining the very capital which ought to be invested in legitimate mining, and investing it in the worst form of gambling." Agreements between railways and ship-owners were prohibited, as were contracts between corporations and their officers. Corporations were forbidden to hold land not used in their businesses over five years. The annulment of all unused charters, claims of franchises, and special privileges was provided for.

Not only was the legislature given power to regulate or prohibit the selling of stock, but it was proposed that the legislature should have the power to pass laws for the regulation and limitation of charges for services performed by all corporations. This was stricken out by a vote of fifty-six to twenty-two,²⁸ perhaps in some measure because of the distrust of the legislature and also of the belief by many that this was too sweeping. The theory on which it was proposed was based on the decision in *Munn v. Illinois*,²⁹ Mr. Terry saying:^{29a} "It was the idea of the committee in reporting this section that there should be no corporations except for public benefit." A number of speeches in opposition denounced the plan of legislative control of charges for services performed and commodities furnished by individuals.³⁰ It was then proposed to limit this to water, gas, and telegraph companies;³¹ water companies were removed from this classification and it was adopted.³² The legislature was also given power to regulate charges for storage and wharfage.

An elective railroad commission was provided "to regulate and establish rates" and given all the powers thought necessary. A strong plea for the establishment of such a commission was made by Mr. Estee.³³ It should be borne in mind that both the workers and the farmers, particularly the latter, were very bitter against the railroads.

²⁸ Id. p. 816.

²⁹ (1876), 94 U. S. 113, 24 L. Ed. 77.

^{29a} Debates and Proceedings, p. 812.

³⁰ Id. p. 815.

³¹ Id. p. 827.

³² Id. p. 828.

³³ Id. pp. 377-382.

Many other restrictions on corporations, particularly mining and banking, were placed in the constitution. As we should expect, the hopes and fears of the contending parties were not completely realized. That there was a fear of over-regulation by many corporations was shown by the fact that it was openly claimed in the convention that the capitalists would leave the state and withdraw their money if many of these measures were actually adopted—as in most cases they were. But the proponents of the measures said “Let them go.” Thus Mr. Terry said:³⁴ “It has been said the effect would be to drive this stock board to Virginia City. Well, as far as I am concerned, and I think the people of the State are of the same opinion, I would be perfectly willing to see the whole business in—a climate very much farther south than Virginia City. . . . The country would be prosperous now but for that.” And Mr. Cross said that the stock boards were actually a disadvantage,³⁵ as they diverted money from the channels into which it should properly flow to “the worst form of gambling.” The only point on which the radicals seemed to favor the corporations was in the fact that provisions were passed designed to protect domestic corporations against foreign corporations. In their Address to the State, however, the delegates were quite conservative, only saying:³⁶ “Many restrictions demanded by the advancing ideas of the times have been provided for.”

XI.

By many the question of taxation was considered the chief problem to be settled by the Convention. There was manifest a desire to decrease the tax burden of the poor and to increase the amount paid by the wealthy and creditor classes in society.

The first question to be solved was the definition of taxable “property”. It was determined to include “moneys, credits. . . . all capable of private ownership”, including mortgages, etc. Growing crops were exempted, as was government and state property. The definition made, it was said in the Address,³⁷ “will bring upon the assessment roll an immense amount of

³⁴ *Id.* p. 808.

³⁵ *Id.* p. 809.

³⁶ *Id.* p. 1523.

³⁷ *Id.* p. 1523.

property in the hands of the wealthy which now escapes taxation." The primary question involved in the consideration of what constituted "property" was the taxation of solvent debts. The chief argument for their taxation, and that representing the general or prevailing idea, was made by Mr. Huestis:⁸⁸

"Whether secured or not, solvent debts should be taxed, because they are property in law and in fact. This is abundantly proved by the fact that they may be sold and transferred and as such, protected by the law, they should be taxed as other property is taxed. . . . While the taxation of solvent debts, as heretofore managed, may have resulted in double taxation in some cases, yet that is not a necessary or inevitable result. . . . Mr. Chairman, I hold it to be a correct principle that taxation should be so laid that each and every citizen shall bear such part of the public burdens necessary for the maintenance of government, as is proportionate to his property protected by the State. For the purposes of taxation I do not regard growing crops as property distinct from the land, and am opposed to taxing the same. . . . It also renders necessary the taxation of money secured by mortgages, or other liens, and the taxation of all solvent debts. This species of property is tangible in law, and calls for protection which the State insures, at whatever cost, and therefore it is but just and reasonable that it should be equally taxed with other property."

After deciding that solvent debts should be taxed the question arose as to who should pay the tax—the debtor or the creditor. It was arranged that the latter should bear the burden. The general argument for this was made by Mr. Huestis:⁸⁹

"But, says the mortgagee, there is a stipulation in the mortgage to the effect that the mortgagor shall pay the taxes on the money so secured. Now, Mr. Chairman, this doubtless would satisfy the State, but, sir, is it just? Is it equitable? In the case just mentioned, I contend that the mortgagee has not borne his just proportion of the burden of taxation; he has merely extracted from the unfortunate borrower more interest. . . . I am also a sympathizer with those whose necessities have made them borrowers. . . . One of the most fruitful sources in assisting and forwarding the sophistry of the mortgagee, is the tax on land. . . . He assumes double taxation. . . . Who, I ask, should bear the tax? Has not that land been secured to him, the mortgagee, by an instrument in writing, the tenor of which

⁸⁸ *Id.* p. 845.

⁸⁹ *Id.* p. 846.

bars all others from trespassing on his rights, to which the Courts yield a specific, complete, and unquestioning deference? And in the event of a failure upon the part of the mortgagor to fulfill his obligation, proceed to foreclose and sell, the mortgaged estate? And for all this protection the mortgagee expenses of the foreclosure and sale coming out of the mortgage to the effect that the mortgagor shall pay the pays not one cent in taxes."

The main argument in opposition was that it was double taxation. Thus, Mr. Gregg said:⁴⁰ "A mortgage is an abstract thing; a note covered by a mortgage is an abstract thing. . . . You propose to tax the property, and then the note, and then the mortgage." His argument is based in the principle that it makes no difference to the people, the State, or the county, who pays the tax.⁴¹ Mr. Larkin argued that mortgages and deeds of trust were only an evidence of interest in property and were not of themselves property.^{41a} Some of the upholders of the scheme proposed, denied that it would be double taxation; others admitted it would and attempted a justification.⁴² Agreements for the mortgagor to pay the tax were absolutely forbidden.

To the argument that capital might leave the state, making it impossible to borrow at all, Mr. Blackmer replied:⁴³ "If there are not people in this State who are willing to loan money at a fair rate of interest, there is plenty of capital elsewhere that will find out that condition of things and come here for investment. That is nothing but a bugbear."

There was also some opposition to the taxation of corporation stock and of franchises. The taxation of stock, it was urged, would be a double taxation—of the property and of the stock.⁴⁴ Mr. Reddy opposed multiple taxation on mines and mining, including the taxation of corporate stocks; Mr. Gregg declared that the taxation of franchises would be double taxation, since the franchise included the property. But the argument on the taxation of stocks and franchises was very short in comparison with that on the taxation of solvent debts. It was finally adopted⁴⁵ by a vote of eighty-one to forty-seven.

⁴⁰ Id. p. 866.

⁴¹ Id. p. 850.

^{41a} Id. p. 852.

⁴² Id. p. 858 (Rolfe).

⁴³ Id. p. 853.

⁴⁴ Id. p. 854 (Cross and Shafter).

⁴⁵ Id. p. 1472.

Favoring the exemption of growing crops from taxation, Mr. Ohleyer said:⁴⁶ "Were all property and things of value taxed, the farmer would have little cause to complain if he had to pay tax on his growing crop, for the rate would be so low as to be but little felt." Mr. White argued:⁴⁷ "Every single law within the code bears down to-day upon the farmers. . . . It is the taxation question and the way in which land is held in this State that is driving the people of the State into the cities." He said that the existing law providing for the taxation of growing crops had been disregarded as it "is so obnoxious to the feelings of the whole people that they will not see it carried out." Mr. Steele, arguing for the exemption from taxation of the growing crops, said:⁴⁸ "Growing crops possess no definite or determinate value. You cannot tell anything about it. It depends upon other contingencies. . . . You cannot reach it; you cannot estimate it." Arguing for the taxation of growing crops Mr. Gregg favored it⁴⁹ "as a part of the realty. It is an improvement. It is valuable in proportion as it adds value to the land." To the argument advanced by Mr. Steele and others that its value was not ascertainable he replied: "Can you determine how much your house will be worth next June? That house may burn down. Personal property is an uncertain thing." Holding the balance of power in the Convention the farmers were able to include this exemption clause without great difficulty.

As regards the taxation of land it was further provided that land and improvements thereon should be taxed separately. It was believed that the holders of vast tracts of land for speculation or other purposes would be compelled to improve their holdings or sell them to those who would do so. It was alleged that many large holdings were paying almost no taxes, and that this plan would break up the large land monopolies, resting principally on the Spanish grants.

Another plan to break up land monopolies by taxation was a graduated land tax proposed by Mr. O'Sullivan of the Workingmen's party, which had declared for the limitation of land

⁴⁶ Id. p. 851.

⁴⁷ Id. p. 852.

⁴⁸ Id. p. 865.

⁴⁹ Id. p. 866.

holdings.⁵⁰ This was an attempt to limit by taxation the number of acres of land a man might hold. The chief speeches in opposition were those of Mr. Caples and Mr. Waters.⁵¹ The proposal was defeated by a vote of sixty-four to forty.⁵²

Some idea of the manner in which the land monopolies were regarded can be obtained from the following statements.⁵³ Said Mr. Dowling: "Of all the monopolies existing in California to-day, the land monopoly is the most grinding." His amendment to limit future grants by the State to three hundred and twenty acres was rejected. Mr. Barbour declared: "There is, sir, a universal and growing demand throughout this State on the part of everyone who studies the situation, that laws must be aimed at this monopoly." Mr. O'Sullivan asserted: "Land monopoly exists in this State to a fearful extent; a few men have grabbed hundreds of thousands of acres of the best land in this State, through illegal means, and hold it for speculative purposes."

The radical views of the Workingmen's party, however, could not gain the approval of the farmers, who held the balance of power in the Convention, so a compromise was effected in which no positive limitation was laid upon the size of land holdings, but the Constitution, section 2 of Article XVII, denounced the holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, and said that such holdings "should be discouraged by all means not inconsistent with the rights of private property." As a protection to the farmers and small property owners, the right of compensation to individuals under the doctrine of eminent domain was fully secured.⁵⁴

The legislature was given the right to impose income taxes if it wished. It was believed that if any persons or corporations escaped the taxation which the provisions already considered were intended to make them pay, they could then be reached by a personal or corporation income tax, which was designed to correct any possible evils that might arise. Mr. Ayers defended it as "the friend of the poor man". In reply to the

⁵⁰ Id. p. 1329.

⁵¹ Id. p. 1330.

⁵² Id. p. 1330.

⁵³ Id. p. 1403.

⁵⁴ Id. pp. 1190, 1216.

objection of its inquisitorial nature Mr. Freud admitted the objection but said it was no more so than other taxes. Some opposed it on the ground that it was unnecessary, since the legislature had the power anyway. On the other hand, Mr. McCallum wished to make it mandatory. Mr. Beerstecher opposed the tax because of its failure following the Civil War, while Mr. Freeman declared it a failure in practice. It was adopted by a vote of sixty-six to thirty-nine and later indorsed by a vote of eighty-one to forty-seven.⁵⁵

An inheritance tax scheme was proposed, not, however, to be mandatory on the legislature. Parts of estates in which each share was worth over five thousand dollars, or the shares over that amount, were to be taxed. Despite some really good speeches in its behalf⁵⁶ the measure was defeated by sixty-eight to thirty-nine.

The underlying motive in the taxation system, as adopted, was to relieve the workers and farmers, and to tax creditors, corporations, and holders of corporation stocks. No property valued at less than five hundred dollars was to be taxed at all. The previous scheme or system of taxation had undoubtedly oppressed the workers and farmers; perhaps the scheme adopted, provided that it would work out as designed, would go too far in the other direction.

XII.

What measures were directly and more specifically designed to aid the working class? First, of course, there was the Chinese question. The presence of foreigners ineligible to become citizens was declared dangerous. The legislature was to discourage such immigration by every means in its power. The system of employing Asiatic coolies was denounced; all contracts for coolie labor were to be void. Corporations were forbidden to employ Chinese or Mongolians, nor could they be employed on public work, except in punishment for crime. In their Address the Convention declared:⁵⁷ "The article authorizes the

⁵⁵ In support see speeches of Dudley, its proposer, 945; Wyatt, 945; Webster, 946; and Howard, 946. The debate on this subject displays more real knowledge and ability, in the opinion of the author, than any other in the convention.

⁵⁶ Debates, p. 1327 (Ayles and Campbell).

⁵⁷ Debates, 1431. There was little objection to the article on the Chinese and it was adopted 104 to 17 in the Convention.

use of the whole police power of the State to abate what no argument is necessary to prove is a nuisance—that is, the presence and influx of the Chinese. Their presence is declared to be dangerous. . . . These provisions are rendered the more necessary in view of the fact that the Federal Government has refused to grant us any relief from this overshadowing evil.”

It was declared that eight hours was to be a legal day's work on all public works. This section was adopted by a vote of ninety-nine to seventeen.⁵⁸ Mr. Beerstecher said: “Eight hours labor is enough for any human being”. He argued that it would also give work to more men. The farmers were willing to support the proposal, since it did not extend to farm labor. Mr. Condon predicted that the six hour day or less would eventually come.

As there were a large number of workers and foreigners, many with but little education, we would naturally expect to find some ludicrous and ridiculous ideas expressed. The average capacity of the delegates of the Workingmen's party was very high, but we do find here and there some rather novel plans. Thus, in discussing the eight hour day Mr. Joyce asserted that all public works should be done by the day, rather than by contract. The only important speech in opposition to the eight hour provision was that of Mr. Caples. He declared that this would actually reduce wages, since the wage would depend on the amount of work done and the working day should be determined by the law of supply and demand. The proposal “could not meet the approval of any man of intelligence.”

Article VIII said that the legislature “shall” provide for a militia system. The legislature was to direct the manner of appointment or election of officers. “The governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.” No flags were to be carried by any military organization but those of the United States and California. It was declared⁵⁹ and denied⁶⁰ that the farmers opposed the establishment of a militia system as a waste of funds. The workers regarded its establishment

⁵⁸ Debates, pp. 1422, 1423, 1424.

⁵⁹ Id. p. 731.

⁶⁰ Id. p. 733.

as a plan to enable capital to oppress labor.⁶¹ Thus Mr. Wellin declared: "The workingmen do not need to be kept down. We propose to work within the law. It is the militia which needs to be kept down. We ask none of its protection. We will abide by the laws, and let them do the same." There were many attacks on the militia's record in the Civil War, especially on the Seventh New York. Mr. Stedman favored the abolition of the militia: Mr. O'Donnell said the only benefit of the militia was "to cause a riot"; and Mr. Barbour said that the militia was absolutely no protection to the State. A large number of speakers denounced bitterly the action of the militia in San Francisco during the existence of the Workingmen's party and the Vigilance days, making many statements as to what actually occurred.

There was quite a debate on the question as to whether militia companies should be permitted to carry foreign flags. At first the Convention voted thirty-five to sixty to permit their carriage;⁶² this was later rescinded by a vote of sixty-eight to twenty-two.⁶³ Said Mr. Beerstecher:⁶⁴ "If a society desires to carry their own banners in connection with the United States flag, what possible objection can there be to it? It seems strange that Germans, Irishmen, or Frenchmen, if they choose, cannot be allowed to carry the flag of their country in connection with the American flag." The whole article on the militia was adopted by a vote of one hundred and six to five,⁶⁵ many of those who had voted or spoken against the militia system voting for the article as a whole.

Not all of the interesting results of the Convention or of the debates have been set forth in this paper;⁶⁶ those of principal value have been presented in rather brief fashion. The author will not undertake to say whether the new Constitution was really in the interests of the working class. Henry George declared that it was not; that it benefited only the landowners.⁶⁷ Looking at the matter from only one main viewpoint, however, he may have permitted the fact that his

⁶¹ *Id.* pp. 733, 734.

⁶² *Id.* p. 736.

⁶³ See p. 1243 for the debate on the question.

⁶⁴ *Id.* p. 736.

⁶⁵ *Id.* p. 1428.

⁶⁶ *Debates*, p. 1389.

⁶⁷ *Popular Science Monthly*, August, 1880, p. 433.

taxation schemes were not adopted to prejudice him against the document as a whole. The Constitution certainly did not provide for any scheme of agrarian socialism; if it had, the farmers would not have returned the large majorities they did in favor of the new document—and it was owing to their votes that it was adopted by a narrow margin of 11,000 in a vote of 145,000.

There were conflicting sentiments in the convention; the workers with their opposition to corporations and monopolies in general and the railroads and land monopolies in particular, the farmers following their views except as to the land monopolies; these interests and others were opposed to the banks and mining companies; a general feeling, against the Chinese was present, with the workers as the especial champions of the anti-Chinese legislation; there were local jealousies and divers sentiments on home rule; there were keen desires of the farmers and workers for a lightening of their tax burdens, and those of the debtor class in general; a divided sentiment as to California's relation to the Union;—and a real unity, except for the Chinese question, only in a distrust of the legislature.

The lack of confidence in the legislature has continued to be shown in many states in the last quarter of a century and in many ways can be compared with the distrust of the legislature manifested by the people in the days of Jackson. There was not, however, as in the days of Jackson, any great desire to increase the power of the governor to any appreciable extent, though there was no real opposition to him. Though the judges had declared many laws desired by the people unconstitutional, the fault for this was laid to the legislators. The executive and judiciary were to be kept co-ordinate, with the legislature's power greatly restricted.

We can trace in the new organic law the principles which dominated the majority in passing its provisions—the destruction so far as possible of monopoly; the taxation of corporations and creditors and a lightening of the taxation of the farmers and workers and the debtor class in general; a solution of the Chinese question; and the prevention of special and general legislation.

We must not forget that in large measure the new constitution was due to special local and transitory causes, outlined at the beginning of this paper. Most prominent among these was the

Workingmen's party of California, which lost power rapidly after the adoption of the new law. Though vanished as an organization, this party has had an influence in the State of California, both in helping to keep alive the opposition to railroad control of politics and in the municipal politics of San Francisco. To secure the desired results, the delegates considered it necessary to fill the Constitution with specific mandates to and prohibitions upon the legislature, on such matters as, rightly or wrongly, their past experience had led them to distrust that body. Education was made public and free; the executive's pardoning power was somewhat curbed; there were some reforms of importance in the judiciary.

From the political side three things are especially noteworthy in the author's opinion, (1) the extent of the secession belief among the delegates, (2) the granting of home rule to San Francisco, paving the way to subsequent extensions to other cities, and (3) the distrust of the legislature as a body to carry out the public will. For a convention of so many radical members and meeting at such a critical time (regarded, at least, as being critical by the people of California) the political results were singularly barren. No definite program was stated in the convention or worked out in the new constitution. No fundamental changes in government—such as in the suffrage, amending process, basis of representation, initiative or referendum—were made. The only change of note was in the provision for home rule charters. Not only were there no fundamental or radical changes made in the constitution, but few were proposed in the convention and for the most part these did not receive any organized support. A number of skilful lawyers outwitted the more radical members at almost every turn. The economic changes that were made in the new constitution were not well thought out, many of them being extremely crude.

It should not be thought, however, that this lack of real results from a convention containing many radicals was peculiar to the California convention. We know that the same results—or lack of them—obtained in the Illinois convention of 1869, the Pennsylvania convention of 1872, and other conventions of the same period. It was not until later, in the Michigan convention,⁶⁸

⁶⁸ On the Michigan convention see 2 *American Political Science Review*, pp. 443-447, and 6 *Michigan Law Review*, p. 533.

the Oklahoma convention,⁶⁹ and the Ohio⁷⁰ and New York conventions that we find definite programs declared and debated; and in many cases adopted in whole or in part—the working out of the sentiments which led to the conventions of the seventies.

Noel Sargent.

University of Chicago,
Chicago, Illinois.

⁶⁹ On the Oklahoma convention see 42 *American Law Review*, pp. 362-368; 31 *New Jersey Law Journal*, pp. 196-200; 6 *Michigan Law Review*, pp. 105-111.

⁷⁰ On the Ohio convention see 55 *Ohio Law Journal*, pp. 425-429; 56, pp. 230-233.